

REMARKS

1. The abstract has been trimmed, and revised in view of the amendment to claim 1.

2. Claims 1, 8 and 49-57 have been amended to strike the "such as" clause, thereby mooting the rejection on OA pages 2. The "such as" clauses of claims 1 and 8 are the basis for new claims 152 and 153.

3. The term "and/or" (claim 1) is a commonly accepted shorthand for the so-called "inclusive OR", that "A or B or both A and B". Thus, Webster's New Twentieth Century Dictionary (1983) p. 68 (Exhibit 1) has the entry

and/or, either and or or, according to what applies; as, personal and/or real property.

According to a search of US patents issued since 1976, 168,674 such patents present at least one claim containing the term "and/or". (Exhibit 2.) It follows that this term is generally accepted by the patent bar and the USPTO.

4. Claims 1-6, 8, 22, 25, 31, 49-58 but rejected as obvious over Sugawara (OA p. 5). The examiner conceded that claim 7 defines allowable subject matter (OA p. 8). Claim 7 is dependent on claim 6 which in turn is dependent on claim 1.

We have amended claim 1 to include, except as noted below, the limitations of claims 6 and 7, thereby mooting the obviousness rejection. (Claims 6 and 7 are accordingly cancelled as they do not further limit amended claim 1.)

In the course of amending claim 1, we noted that clause (a) recited a "capture body" whereas clause (c) recited a "capture disc". We believe that clause (c) should also have recited a "capture body" in view of original claim 3, limiting the body to a "planar disc".

Claim 7 is dependent on claim 6, and the latter recited "a circular capture disk support supporting the capture disc,

etc." in discussing claim 1, the examiner conceded that Sugawara does not explicitly disclose rotating the vacuum container around the axis of the capture disc, but in discussing claim 3, asserted that Sugawara discloses that the capture body is a planar disc. Likewise, in discussing claim 6, the examiner asserted that Sugawara discloses a circular capture disc support supporting a capture disc. It thus does not appear that the distinction between a capture disc and a capture body, or between a circular capture disc support and a capture body support, was deemed relevant to patentability of claim 7.

The discussion of claim 7 appears rather to emphasize the failure of the prior art to disclose the there-recited vacuum container housing, and while the passage alludes to the "capture disc", it does not appear that the disc shape was significant.

Hence, in amending claim 1 to incorporate the limitations of claim 7, we have incorporated all limitation except that the capture body is a disc and the support is circular. However, we have added claim 154, dependent on 3, reciting that the support is circular.

5. Claims 1-8, 22, 25, 31, 49-58 are provisionally rejected on the ground of obviousness-type double patenting over the claims of the later-filed copending application 12/160,306.

As explained in MPEP 804(B)(1), "if a "provisional" nonstatutory obviousness-type double patenting (OA p.) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later filed application is rejectable on other grounds, the examiner should withdrawn that rejection and permit the earlier-filed

In re of: 10/583,997

application to issue as a patent without a terminal disclaimer".

The PTO has indicated allowable subject matter, and we have amended the claims so they are directed to that subject matter and fix the 112 rejection. Hence, under MPEP §804(B)(1) the provisional ODP rejection should be withdrawn.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant(s)

By: 

Iver P. Cooper
Registration No. 28,005

Enclosures

- Exhibit 1 Webster's excerpt
- Exhibit 2 PTO database search ACLM/"and/or"
- Abstract

IPC:lms

Telephone No.: (202) 628-5197

Facsimile No.: (202) 737-3528

G:\ipc\g-i\INSP\Christensen9A\Pto\christensen9a.ptoamendment.doc